

EXHIBIT A

Subject: Re: Henry et al. v. Brown Univ. et al. - Subpoenas to Plaintiffs' Parents
Date: Thursday, June 1, 2023 at 9:20:10 PM Pacific Daylight Time
From: Peter Bach-y-Rita
To: Suggs, David, Richard Cipolla
CC: 568 Litigation, 568_litigation@gilbertlitigators.com, Carbone Defendants Service List
Attachments: image001.png

David,

In addition to the items in your recap, my notes reflect the following additional points below. Given that we have a joint status report due on June 9, I suggest that the parties frame for the court the issue of whether Defendants will provide Plaintiffs with records from their financial aid offices and whether Plaintiffs are required to update their interrogatory responses both before and after they get those records.

1. On April 18, April 25 and May 17, I sent emails requesting that Defendants provide me with records that would enable Plaintiffs to give complete and accurate responses to Defendants' interrogatories. Yesterday, Defendants informed me for the first time that Defendants are not taking any steps to respond to my requests.
2. Defendants take the position that they are not required to provide those records under FERPA because my emails did not constitute proper FERPA requests and that Plaintiffs should have issued RFPs.
3. I asked if Defendants would authorize me to contact their financial aid offices directly (instead of going through Defendants' counsel), in order to obtain the records. Defendants said that they would not authorize me to do that.
4. Defendants stated that the records "might" not contain information sufficient for Plaintiffs to provide complete and accurate responses to the interrogatories. However, you were unable to say one way or the other, because you have never seen the records..

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From: Suggs, David <dsuggs@whitecase.com>
Date: Wednesday, May 31, 2023 at 12:58 PM
To: Richard Cipolla <rcipolla@fnf.law>, Peter Bach-y-Rita <pbachyrita@fnf.law>
Cc: 568 Litigation <568_Litigation@fnf.law>, 568_litigation@gilbertlitigators.com
<568_litigation@gilbertlitigators.com>, Carbone Defendants Service List
<Carbone_Defs_Service@listserv.whitecase.com>
Subject: RE: Henry et al. v. Brown Univ. et al. - Subpoenas to Plaintiffs' Parents

[EXTERNAL SENDER]

Peter,

Thank you for speaking with us yesterday. Below is a brief recap of the call. Let us know if you believe any of this is incorrect.

1. Plaintiffs will respond by tomorrow about whether and when they will supplement their answers to Defendants' interrogatories, including information omitted from Plaintiffs' initial responses (see my May 10, 2023 email re Cameron Williams) or new information received from non-party institutions.
2. Plaintiffs will verify whether they have produced documents from their parents' files. Defendants requested that the metadata accurately identify the producing parent. The bates labels should as well. Productions of the parents' documents will be substantially complete with a production this week.
3. Plaintiffs will verify whether their productions in response to the Defendants' RFPs are substantially complete.
4. Defendants pointed out that Plaintiffs' 5/19 productions includes a parent document that was apparently withheld as non-responsive, although it contains a responsive attachment (CORZO_00001376). This is not permitted under the ESI Protocol, which states: "Non-responsive parent documents must be produced if they contain a responsive attachment and are not withheld as privileged." Paragraph II.G. Defendants request that the parent document be produced.
5. Defendants again requested a crosswalk of documents that Plaintiffs reproduced to correct ESI issues (see attached 5/3 email).

Thanks,
David

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From: Richard Cipolla <rcipolla@fnf.law>
Sent: Friday, May 26, 2023 6:14 PM
To: Suggs, David <dsuggs@whitecase.com>; Peter Bach-y-Rita <pbachyrita@fnf.law>
Cc: 568 Litigation <568_Litigation@fnf.law>; 568_litigation@gilbertlitigators.com; Carbone Defendants Service List <Carbone_Defs_Service@listserv.whitecase.com>
Subject: RE: Henry et al. v. Brown Univ. et al. - Subpoenas to Plaintiffs' Parents

David,

Plaintiffs are free at 3:30 PM ET Tuesday for a M&C.

In addition, we've reached out to COHFE to make the original productions available to you. They've indicated they will provide new links next week, which we will promptly forward. Apologies for the oversight.

Best,
Richard Cipolla
Associate

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(@) rcipolla@fnf.law

From: Suggs, David <dsuggs@whitecase.com>
Sent: Friday, May 26, 2023 12:44 PM
To: Peter Bach-y-Rita <pbachyrita@fnf.law>
Cc: 568 Litigation <568_Litigation@fnf.law>; 568_litigation@gilbertlitigators.com; Carbone Defendants Service List <Carbone_Defs_Service@listserv.whitecase.com>
Subject: RE: Henry et al. v. Brown Univ. et al. - Subpoenas to Plaintiffs' Parents

[EXTERNAL SENDER]

Peter,

Please let us know if Plaintiffs are available to confer on Tuesday between 10 am and 2 pm ET or after 3 pm.

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From: Peter Bach-y-Rita <pbachyrita@fnf.law>
Sent: Wednesday, May 17, 2023 4:31 PM
To: Suggs, David <dsuggs@whitecase.com>
Cc: 568 Litigation <568_Litigation@fnf.law>; 568_litigation@gilbertlitigators.com; Carbone Defendants Service List <Carbone_Defs_Service@listserv.whitecase.com>
Subject: Re: Henry et al. v. Brown Univ. et al. - Subpoenas to Plaintiffs' Parents

David,

In order to advance the ball, it would be helpful if you could answer my question and let Plaintiffs know what steps Defendants have taken to gather and provide the FERPA records that I requested one month ago on April 18. We agree to meet and confer and would like, at that time, to discuss the progress of the request and why it is taking so long. From where I sit, it appears that Defendants would for some reason prefer to receive interrogatory responses unaided by those institutional FERPA records. It would be helpful to have an open and frank discussion about why that is the case.

As for the parent responses, we will make our first production of the parents' documents collected to date this week. We hope to finish up productions in the next week after that.

Best,

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From: Suggs, David <dsuggs@whitecase.com>
Date: Tuesday, May 16, 2023 at 8:55 AM
To: Peter Bach-y-Rita <pbachyrita@fnf.law>
Cc: 568 Litigation <568_Litigation@fnf.law>, 568_litigation@gilbertlitigators.com
<568_litigation@gilbertlitigators.com>, Carbone Defendants Service List
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Subject: RE: Henry et al. v. Brown Univ. et al. - Subpoenas to Plaintiffs' Parents

[EXTERNAL SENDER]

Peter,

Please let us know when Plaintiffs are going to supplement their interrogatory responses and when their parents are going to produce documents in response to Defendants' subpoena, both of which the Court ordered in February.

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From: Suggs, David
Sent: Wednesday, May 10, 2023 10:52 AM
To: 'Peter Bach-y-Rita' <pbachyrita@fnf.law>
Cc: 568 Litigation <568_Litigation@fnf.law>; 568_litigation@gilbertlitigators.com; Carbone Defendants Service List <Carbone_Defs_Service@listserv.whitecase.com>
Subject: RE: Henry et al. v. Brown Univ. et al. - Subpoenas to Plaintiffs' Parents

Peter,

In February the Court ordered Plaintiffs to respond to two of Defendants' interrogatories, both Interrogatory 1 and Interrogatory 2. Under both the Court's ruling and the Federal Rules, Plaintiffs are obligated to respond with the information in their possession. Plaintiffs' vague request for "records to Plaintiffs sufficient for Plaintiffs to answer interrogatories 1 and 2" does not free Plaintiffs of their discovery obligations and is not a legitimate basis to delay complying with the Court's order. Please confirm that Plaintiffs will serve supplemental interrogatory answers by May 12, 2023. If you do not agree to do so, please provide your availability to confer.

Defendants also note that Plaintiff Williams appears to have applied to and been accepted by The King's College, see Williams_00000283, but he did not list that institution in his responses. Mr. Williams should supplement his responses with information relating to the King's College or explain why that information is not responsive.

Finally, we asked Plaintiffs to confirm that their parents will produce documents responsive to Defendants' subpoena by May 10, 2023. We have received no response. The parents have been aware of the requests in the subpoena since January 2023, and Defendants served the subpoena on March 20, 2023. Please state when the parents will produce responsive documents. If that date is not next week, please provide your availability to confer.

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From: Peter Bach-y-Rita <pbachyrita@fnf.law>

Sent: Tuesday, April 25, 2023 5:45 PM

To: Suggs, David <dsuggs@whitecase.com>

Cc: 568 Litigation <568_Litigation@fnf.law>; 568_litigation@gilbertlitigators.com; Carbone Defendants Service List <Carbone_Defs_Service@listserv.whitecase.com>

Subject: Re: Henry et al. v. Brown Univ. et al. - Subpoenas to Plaintiffs' Parents

David,

I am following up on my email of last Tuesday. Please confirm that Defendants will provide records to Plaintiffs sufficient for Plaintiffs to answer interrogatories 1 and 2. I would like to get those records as soon as possible, so that I can turn around the supplemental interrogatory responses that you are asking for.

Regards,

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From: Peter Bach-y-Rita <pbachyrita@fnf.law>

Date: Tuesday, April 18, 2023 at 4:47 PM

To: Suggs, David <dsuggs@whitecase.com>

Cc: 568 Litigation <568_Litigation@fnf.law>, 568_litigation@gilbertlitigators.com <568_litigation@gilbertlitigators.com>, Carbone Defendants Service List <Carbone_Defs_Service@listserv.whitecase.com>

Subject: Re: Henry et al. v. Brown Univ. et al. - Subpoenas to Plaintiffs' Parents

David,

We are supplementing the responses to interrogatories number 1 and 2 with what responsive information we have received from non-party schools that the plaintiffs applied to. As to party/defendant schools, where the responses say "refer to Vanderbilt records," or similar, we will also supplement those responses. However, in order to do so, the plaintiffs will have to rely on records from the defendants' offices. In order to ensure that the responses we provide are accurate and complete, Plaintiffs hereby request that information from defendants' offices. You can send it to my attention.

In the absence of records from party or non-party schools, the parents will answer to the best of their recollection, and will state they will correct or supplement their answers upon receipt of records from party or non-party schools.

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From: Suggs, David <dsuggs@whitecase.com>

Date: Monday, April 17, 2023 at 3:08 PM

To: Peter Bach-y-Rita <pbachyrita@fnf.law>

Cc: 568 Litigation <568_Litigation@fnf.law>, 568_litigation@gilbertlitigators.com

<568_litigation@gilbertlitigators.com>, Carbone Defendants Service List

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Subject: RE: Henry et al. v. Brown Univ. et al. - Subpoenas to Plaintiffs' Parents

[EXTERNAL SENDER]

Peter,

Plaintiffs' offer to "supplement their interrogatory responses to the extent that the documents received from third party schools contains [sic] responsive information" is insufficient and contrary to Court order.

Plaintiffs have provided incomplete answers to Interrogatory 1. For example, Plaintiff Williams did not respond to several elements of Interrogatory 1 with respect to Vanderbilt University, instead writing "Refer to Vanderbilt records."

Plaintiffs have not responded at all to Interrogatory 2.

As Plaintiffs know, Defendants filed a motion to compel Plaintiffs to respond to both interrogatories, arguing that Plaintiffs' responses were inadequate. See ECF 275-1 at 3-6. The Court ruled in favor of Defendants, ordering Plaintiffs to respond to Interrogatory Nos. 1 and 2. Feb. 8, 2023 Tr. 20:13-18.

Two months have passed since the Court's ruling on those interrogatories. Please confirm – before this Thursday's hearing – that Plaintiffs will supplement their interrogatory responses, as required by the Court's February 8, 2023 ruling, by April 28, 2023.

Thanks,
David

David Suggs | Partner

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From: Peter Bach-y-Rita <pbachyrita@fnf.law>
Sent: Thursday, April 13, 2023 9:34 PM
To: Suggs, David <dsuggs@whitecase.com>
Cc: 568 Litigation <568_Litigation@fnf.law>; 568_litigation@gilbertlitigators.com; Carbone Defendants Service List <Carbone_Defs_Service@listserv.whitecase.com>
Subject: Re: Henry et al. v. Brown Univ. et al. - Subpoenas to Plaintiffs' Parents

David,

Plaintiffs will supplement their interrogatory responses to the extent that the documents received from third party schools contains responsive information. Plaintiffs also agree to act reasonably to provide FERPA and privacy consents to subpoenaed universities that you forward to our attention, although without seeing the actual consents and agreements, we cannot give you a blanket guaranty in advance that Plaintiffs will sign them regardless of the terms.

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On Apr 12, 2023, at 9:47 AM, Suggs, David <dsuggs@whitecase.com> wrote:

[EXTERNAL SENDER]

Peter,

I'm following up on my email below. Are Plaintiffs going to supplement their interrogatory responses and provide FERPA and privacy consents to subpoenaed universities?

Thanks,
David

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From: Suggs, David
Sent: Wednesday, April 5, 2023 11:27 AM
To: Peter Bach-y-Rita <pbachyrita@fnf.law>

Cc: 568 Litigation <568_Litigation@fnf.law>; 568_litigation@gilbertlitigators.com; Carbone Defendants Service List <Carbone_Defs_Service@listserv.whitecase.com>
Subject: RE: Henry et al. v. Brown Univ. et al. - Subpoenas to Plaintiffs' Parents

Peter,

I write to summarize the parties' meet and confer that took place yesterday, April 4, 2023. We discussed Plaintiffs' objections to Defendants' subpoenas to Plaintiffs' parents and Plaintiffs' responses to Interrogatory Nos. 1 and 2. Defendants plan to include their position on the parents' subpoena in the upcoming JSR.

Subpoena's to Plaintiffs Parents

1. Plaintiffs stated that they are not withholding any documents responsive to Request No. 1
2. With respect to Request No. 2:
 1. Plaintiffs questioned the relevance of student loans
 2. Plaintiffs believe the Court has effectively ruled that the parents do not have to produce documents about loans
 3. The parents are only willing to produce direct communications about financial aid and scholarship offers with the provider of that aid/scholarship (not, for example, communications between parents regarding financial aid packages)
3. The parents are identifying responsive documents by searching through their files themselves with guidance from Plaintiffs' counsel over the phone. Counsel are not, for example, copying the parents' email accounts and undertaking an attorney review of those files to identify responsive materials. Plaintiffs' counsel declined to give additional information about their collection and search methodology, including use of search terms.
4. Plaintiffs' counsel did not provide any specifics concerning the burden of producing the additional documents requested by Defendants

Interrogatory Nos. 1 and 2

1. Defendants asked Plaintiffs to supplement their responses to Defendants' interrogatories, noting that the Court ordered Plaintiffs to respond to Interrogatory Nos. 1 and 2. 2/8/23 Tr. 20:13-18.
2. Plaintiffs initially refused to supplement their responses with new information gained from non-party institutions, contending that the Federal Rules do not require them to do so and the information is in Plaintiffs' document productions. Plaintiffs then proposed that Defendants identify to Plaintiffs any documents Defendants believe should be included in a supplementary interrogatory response. Later, Plaintiffs stated they will discuss Defendants' position and revert to Defendants.
3. Plaintiffs stated that they will not subpoena non-party institutions to obtain additional information about Plaintiffs' financial aid offers. Plaintiffs said that, if Defendants subpoena the schools that stated they will only produce documents in response to a subpoena, Plaintiffs will take under advisement whether to give FERPA and privacy consent to the schools to produce the documents.

If Plaintiffs believe anything in the above summary is inaccurate, please advise.

Thanks,
David

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From: Peter Bach-y-Rita <pbachyrita@fnf.law>
Sent: Friday, March 31, 2023 8:30 AM
To: Suggs, David <dsuggs@whitecase.com>

Cc: 568 Litigation <568_Litigation@fnf.law>; 568_litigation@gilbertlitigators.com; Carbone Defendants Service List <Carbone_Defs_Service@listserv.whitecase.com>
Subject: Re: Henry et al. v. Brown Univ. et al. - Subpoenas to Plaintiffs' Parents

David,

We are available to meet and confer on Monday or Tuesday after 3 pm ET. However, I note that your email response does not move the ball on clarifying the issues. The Defendants' request No. 2 seeks: "All Documents Concerning Financial Aid, scholarships, **loans**,..." The very text of the Request contains the word "loans." Since as you point out, Judge Kennelly did not modify Request No. 2, one of two things must therefore be true: (1) the Court is allowing the Defendants to seek documents about loans from the Parents **or** (2) the Court is not allowing Defendants to seek all documents from parents that fall under the plain meaning of Request #2 as written. Which of these two positions are you taking? If you can let us know, it will help to clarify what we are meeting and conferring about.

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On Mar 27, 2023, at 3:04 PM, Suggs, David <dsuggs@whitecase.com> wrote:

[EXTERNAL SENDER]

Peter,

Judge Kennelly reviewed each of the five subpoena requests that Defendants proposed serving on Plaintiffs' parents. He struck Request Nos. 3-5. He modified Request No. 1. He made no changes to Request No. 2. Indeed, he stated "that one is okay." Tr. 17 at 13.

Defendants do not agree that Plaintiffs can re-write the Court's ruling permitting Defendants to serve Request No. 2. Plaintiffs' position is particularly unpersuasive given their reliance on the boilerplate objection that the two-request subpoena is "overbroad." Plaintiffs do not appear to have even assessed the burden of compliance.

Please let us know when Plaintiffs are available to confer so Defendants can better understand what Plaintiffs propose excluding from the documents that the Court ordered them to produce.

Thanks,
David

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From: Peter Bach-y-Rita <pbachyrita@fnf.law>
Sent: Friday, March 24, 2023 11:50 PM
To: Suggs, David <dsuggs@whitecase.com>; 568 Litigation <568_Litigation@fnf.law>; 568_litigation@gilbertlitigators.com
Cc: Carbone Defendants Service List <Carbone_Defs_Service@listserv.whitecase.com>
Subject: Re: Henry et al. v. Brown Univ. et al. - Subpoenas to Plaintiffs' Parents

David,

Looking more closely at the transcript of the February 8 hearing, this is what the Court said about Request #2, to which you refer: "Request two, this is the one for other forms of financial aid. Give me one second here. I just got to decipher my notes. So on some of these, as I said, I'm just going to rule. The defendants argue that this is important in order to compare financial aid offers and that it might show the non-existence of collusion or the absence of impact of collusion. I think that has some potential relevance. I think the same thing about records regarding financial aid offers from other sources." Additionally, regarding loan documentation, the Court ruled: "The last one is loan agreements, and for the reason I said on request 18 and 26, I don't think that's relevant. I'm not enforcing that. So I'm done with this motion."

As written, Request #2 goes far beyond the Court's intended scope of discovery. For one thing, despite the Court's clear instructions that Defendants cannot seek loan documentation from students, Defendants appear to think that they can foist that obligation on non-party parents. (Request #2 requests "All Documents Concerning Financial Aid, scholarships, loans,..."). Similarly, we do not think the Court would approve of Defendants seeking worn out copies of Fiske guides and brochures from financial aid departments even though all of that detritus comprises documents Concerning Financial Aid.

The Subpoenas are overbroad. They do not comport with the Court's instructions to the parties. We have given you the opportunity to revise and clarify the Subpoenas to make them reasonable in scope. In light of your refusal, Plaintiffs are forced to apply their own reasonable interpretation. Plaintiffs interpret Request #2 as seeking "records" of financial aid offers and scholarships, including applications and offers. We will also interpret the Court as permitting Defendants to obtain correspondence between the parents and financial aid offices and potential third-party scholarship sources.

Regards,

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From: Suggs, David <dsuggs@whitecase.com>

Date: Thursday, March 23, 2023 at 3:19 PM

To: Peter Bach-y-Rita <pbachyrita@fnf.law>, 568 Litigation
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Cc: Carbone Defendants Service List

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Subject: RE: Henry et al. v. Brown Univ. et al. - Subpoenas to Plaintiffs' Parents

[EXTERNAL SENDER]

Peter,

Request No. 2 in Defendants' subpoena is identical to the second subpoena request that Defendants submitted to the Court in January. *Compare* your email below *with* ECF 279-1. Judge Kennelly reviewed and approved that request at the February 8th hearing on Plaintiffs' motion for a protective order. (Tr. at 17:4-16).

Plaintiffs appear to be conflating Request No. 2 with Defendants' original Request No. 1, which requested:

All Documents Concerning the Plaintiff's application(s) for financial aid for undergraduate education, any decision Concerning such an application, or any appeal of such a decision, including supporting Documents or information used in connection with any such application or appeal, including but not limited to tax returns; W-2s, 1099s, K-1s, and other tax forms; records of untaxed income; and records of assets.

Following the February 8 hearing, Defendants revised Request No. 1, deleting the request for "supporting documents" such as tax returns. For the avoidance of doubt, Defendants confirm that Request No. 2 in the subpoena to Plaintiffs' parents does not seek "supporting Documents or information used in connection with any such application or appeal, including but not limited to tax returns; W-2s, 1099s, K-1s, and other tax forms; records of untaxed income; and records of assets."

We look forward to receiving documents otherwise responsive to Request No. 2 from Plaintiffs' parents.

Thanks,
David

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From: Peter Bach-y-Rita <pbachyrita@fnf.law>
Sent: Wednesday, March 22, 2023 6:46 PM
To: Suggs, David <dsuggs@whitecase.com>; 568 Litigation <568_Litigation@fnf.law>; 568_litigation@gilbertlitigators.com
Cc: Carbone Defendants Service List <carbone_defs_service@listserv.whitecase.com>
Subject: Re: Henry et al. v. Brown Univ. et al. - Subpoenas to Plaintiffs' Parents

David,

The subpoenas, specifically Request No. 2, are overbroad and conflict with the Court's instructions. At the February 8 hearing, Judge Kennelly stated: "I am not, repeat not, allowing subpoenas for the -- what you refer to as the underlying materials; in other words, I gather the materials that would -- that were used to prepare the forms." Your Request No. 2 nevertheless brings in "all documents concerning Financial Aid," which would encompass not just "underlying materials," but also worn-out copies of the Fiske Guide and all manner of burdensome and tangentially relevant documents contrary to the Court's order. Please correct and re-issue the subpoenas.

REQUEST NO. 2: All Documents Concerning Financial Aid, scholarships, loans, or other financial support for the Plaintiff's undergraduate education, including the amount and terms of any merit or need-based Financial Aid the Plaintiff applied for, received, was denied, or declined to accept in connection with the Plaintiff's undergraduate education and Communications with any Institution Concerning Financial Aid.

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From: Suggs, David <dsuggs@whitecase.com>
Date: Monday, March 20, 2023 at 3:59 PM
To: 568 Litigation <568_Litigation@fnf.law>, 568_litigation@gilbertlitigators.com <568_litigation@gilbertlitigators.com>
Cc: Carbone Defendants Service List <carbone_defs_service@listserv.whitecase.com>
Subject: Henry et al. v. Brown Univ. et al. - Subpoenas to Plaintiffs' Parents

[EXTERNAL SENDER]

Counsel,

Thank you for agreeing to accept service on behalf of Plaintiffs' parents. The subpoenas to those parents are attached.

Thanks,
David

David Suggs | Partner

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